IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17009 of 2004

To

SPECIAL CIVIL APPLICATION No. 17012 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI HARIBHAI GAJERA THRO'POWER OF ATTORNE HOLDER - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BM MANGUKIYA for Petitioner(s) : 1,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,
MR UI VYAS for Respondent(s) : 2,
MR BS PATEL for Respondent(s) : 3,
MRS RANJAN B PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/05/2006

ORAL JUDGMENT

1. Rule. Service of rule is waived by S/shri Dipen Desai, learned AGP on behalf of the respondent – State Authority, Shri U.I.Vyas, learned advocate for SUDA and Shri B.S.Patel, learned advocate on behalf of the APMC, Surat. With the consent of the learned advocates for the parties, this group of matters are heard finally and as the common question of law and facts arise in this group of petitions, all these four petitions are being disposed of by this common judgment and order.

2. By way of these petitions under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, direction and/or order to quash and set aside the reservation over the land bearing Block No.9 of village Magob for the purpose of respondent No.3 – Agricultural Produce Market Committee, Surat

(hereinafter referred to as the “APMC” for short and convenience) in Final sanctioned Revised Development Plan 2004 and revised under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 [hereinafter referred to as the “Act” for short]) published vide notification dated 2nd September, 2004 by the State Government. The respective petitioners have also further prayed for an appropriate writ, direction or order holding and declaring that the respondents cannot reserve the land for any other purpose in the Development Plan when the land is already sanctioned for the development of residential premises as far as back in 1998 and some of the portion of the land is already constructed and therefore, reservation made by the respondents for the land bearing Block No.9 of village Magob is ex-facie bad.

3. It is the contention on behalf of the petitioners that at the time when the

modification in the Revised Development Plan was proposed, there was no requirement of land by APMC, Surat and they were having more than sufficient land and therefore, reservation of the lands in question by the State Government and the appropriate authority for APMC, Surat is bad in law and contrary to Section-12 of the Act. It is further submitted by the learned advocate appearing on behalf of the petitioners that for some of the lands in question, development permission was granted by the appropriate authority for putting up construction of residential premises and in some portion of the land there is construction and therefore, the lands in question could not have been put under reservation for APMC, Surat.

4. In support of their above submission, Shri B.M.Mangukiya, learned advocate appearing on behalf of the petitioners has submitted that earlier APMC, Surat sought for very lands in

question and they wanted to get said lands acquired under the provisions of the Land Acquisition and therefore, the Market Committee preferred writ petition being Special Civil Application No.4670 of 1999 before this Court for an appropriate writ, order and direction directing the Collector to act according to the law and to comply with the formalities which are required to be complied with by him and send proposal for acquisition of land to the Government immediately. It is also submitted by Shri Mangukiya, learned advocate that during the pendency of the said special civil application, a resolution came to be passed by the Market Committee that looking to the fact that they have proposed for other lands also and there is no need of the lands in question by the APMC, Surat and therefore, it was decided to withdraw the aforesaid special civil application and on the basis of the aforesaid resolution dated 5.10.2001 passed by the APMC, Surat, APMC, Surat withdrew

the aforesaid Special Civil Application No.4670 of 1999 and the said special civil application came to be dismissed as withdrawn by order dated 9.11.2001 passed by the Division Bench of this Court. Shri Mangukiya, learned advocate has also submitted that even prior thereto against the development permission granted by the authority under Section-29 of the Act with regard to some of the lands, APMC, Surat preferred another writ petition being Special Civil Application No.2095 of 1999 before this Court and considering the fact that the Market Committee has not in need of the lands in question, they also withdrew the said Special Civil Application NO.2095 of 1999. Shri Mangukiya, learned advocate has submitted that inspite of the aforesaid facts and circumstances and despite the fact that there is no need of the lands in question by the Market Committee, then also, under the Revised Development Plan sanctioned vide Notification dated 2.9.2004 the lands in question are put

under reservation for APMC, Surat which is contrary to the provisions of Section-12 of the Act and therefore, it is requested to quash and set aside the said reservation meant for APMC, Surat.

5. Shri Mangukiya, learned advocate for the petitioners has further submitted that the need is required to be considered by the appropriate authority at the time of declaring the intention of the Development Plan and subsequent need and/or requirement is not required to be considered and if subsequent need and/or requirement is considered, it will be contrary to provisions of Section-12 of the Act.

6. Relying upon the averments in the petition with regard to the other lands available and/or averments that even existing shops are vacant and that there is no need by the Market Committee, Shri Mangukiya, learned advocate has further

submitted that still, with malafide intention as one of the petitioners being the brother of the local Member of Legislative Assembly who belongs to opposite party other than the party in power, only with a view to harass him and with malafide intention the reservation is kept and therefore, it is requested to allow the present special civil application. It is also further submitted by him that averments in the petition with regard to need are not controverted specifically and therefore, they are to be treated as uncontroverted and hence, the submission is that when there is no need and more than required land is available, it is requested to allow the present special civil applications and to quash and set aside reservation. Shri Mangukiya, learned advocate has relied upon resolution of the APMC, Surat dated 5.10.2001 resolving to withdraw the aforesaid special civil application and also the communication by the Chief Executive Officer of the Surat Urban Development Authority

dated 29.7.2002 which is at Annexure-D and I to the petition. For the aforesaid purpose, he has also relied upon averments in Para-10, 13, 14 and 15 of the main special civil application.

7. While relying upon the averments made in para-23 to 26, it is also submitted by Shri Mangukiya, learned advocate for the petitioners that earlier the lands in question were forming part of the residential zone and the development plan which was sanctioned by the Government on 31.1.1986 which came into force on 3.3.1986, however, the said Plan was revised in the year 1996 and the revised plan was published under Section-13 of the Act on 28.2.1996 wherein the said lands were proposed to be reserved for APMC, Surat and that thereafter, modified plan was published under Section-15 of the Act on 3.6.1997 in which again the lands were proposed in residential zone which was sent to the Government under Section-16 of the Act on 26.8.1997.

Thereafter, revised development plan came to be published wherein the lands in question are placed in commercial zone and reservation for APMC, Surat is provided. It is also submitted that before preparation of revised development plan, several procedural aspects were required to be followed and looked into by the respondents and respondents were required to look into the requirements of the Market Committee and there is no reason whatsoever for considering the future requirement of the Market Committee and for providing reservations of the lands thereof and the lands in question came to be redesignated in commercial zone for APMC, Surat under Section-12(2)(o) of the Act. It is also submitted by Shri Mangukiya, learned advocate for the petitioners that the authorities have not considered the aforesaid Resolutions and the communication of the Market Committee that there is no need of the lands in question. Meeting with the affidavit-in-reply filed on behalf of the Market Committee, it

is submitted that there is no specific denial of facts mentioned in the petition with regard to the needs of the APMC, Surat and the existing lands available and that merely by saying that APMC, Surat needs the lands is not sufficient. Therefore, it is requested to allow all these special civil applications and to quash and set aside the notification / revised development plan by which the lands in question are redesignated under the commercial zone and reserved for APMC, Surat.

8. Shri B.S.Patel, learned advocate appearing on behalf of the APMC, Surat while relying upon the affidavit-in-reply filed by the market Committee has submitted that in fact, there was and is need of the lands in question by the APMC, Surat and in view of the establishment of the new market yard, there is yet another need of the lands in question. It is submitted that earlier the resolution came to be passed with some oblique

reasons and while relying upon the earlier resolution it is requested to infer the same as so stated in the said resolution that even the Advocate may also be changed for the purpose of withdrawal of the aforesaid special civil application. It is submitted by him that normally for the purpose of withdrawal of the special civil application, the Advocates are not changed. It is also further submitted that when the APMC, Surat asserts that there is need of the lands in question by the Market Committee, the petitioners cannot be permitted to say that the market committee does not need the lands in question and therefore, it is requested to dismiss all these special civil applications.

9. Shri U.I.Vyas, learned advocate appearing on behalf of the SUDA as well as Shri Dipen Desai, learned AGP appearing on behalf of the State Government opposed the present special civil applications. Shri Vyas, learned advocate has

relied upon affidavit-in-reply filed on behalf of the SUDA and has submitted that considering the need of the market committee, the lands in question are rightly redesignated in the commercial zone for APMC, Surat.

10. It is submitted by Shri Dipen Desai, learned AGP that though the petitioners were owners of the lands in question, they have never objected to proposed revised draft plan. It is submitted that all the procedure which is required to be followed as required under Section-12 of the Act and thereafter which is required under the provisions of the Act, have been followed before sanctioning the revised development plan. It is submitted that it is the State Government and the appropriate authority who have to be satisfied with regard to the need of the lands in question for the specific purpose or not and not for the petitioners and therefore, it is requested to dismiss all the special civil applications.

11. Heard the learned advocates appearing on behalf of the respective parties.

12. It appears from the record that the Surat Urban Development Authority (“SUDA” for short) is the appropriate authority for the area in question, which prepared the draft development plan and submitted the same to the State Government and the same was sanctioned by the State Government vide notification dated 31.1.1986 and the development plan came into existence on 3.3.1986. As per proviso to Section-21 of the Act, the authority has to revise the development plan once in ten years from the date on which the final development plan came into force and therefore, it was proposed to revise the development plan. Earlier the lands in question were designated for residential zone, however, in the revised development plan, it was redesignated for commercial use for APMC, Surat

which is objected to by the petitioners. The main contention on behalf of the petitioners is that in spite of the fact that there is no need of the lands in question by the APMC, Surat, the lands in question are redesignated in commercial zone for APMC, Surat and at the relevant time when the revised development plan was proposed, there was no need of the lands in question by the APMC, Surat and future need can not be considered and the need at the time of proposal is required to be considered and therefore, redesignation of the lands in question for commercial use of the APMC, Surat requires to be quashed and set aside. As against this, it is the specific case of the APMC, Surat that looking to the requirement and on establishment of new market yard, they need more land and therefore, the contention on behalf of the petitioners that there is no need of the land in question for the market committee is specifically denied by the APMC, Surat. Therefore, normally it is for the authority for

whom the lands are reserved is required to be satisfied and their need is required to be considered. An identical question came to be considered by the learned Single Judge of this Court in the decision of ISHWARBHAI GANPATBHAI PATEL V. STATE OF GUJARAT & ORS reported in 2006 (1) GLR 758 and after considering various provisions of the Gujarat Town Planning and Urban Development Act, 1976, it is held by the learned Single Judge of this Court negativing the contention that there was no present need and therefore, the petitioners cannot be deprived of their lands. It is also held by the learned Single Judge that town planning pre-supposes need of the future and the reservations of the land is for the needs of the society in future. It is also held by the learned Single Judge in the said decision that once the procedure as envisaged under the Act, more particularly, from Section-13 to Section-17 of the Act is complied with, this Court will not go in search of further

justification of the reservation of the land in question for the purposes referred to in Section-12 of the Act of 1976 and that this Court is not sitting in appeal over the decision of the Government. It is also further held by the learned Single Judge that when the Government sanctions the draft development plan under Section-17 of the Act, whether with reservation or without reservation, this Court will not further evaluate the “need” for reservation or dereservation and will not further look, one by one, to all the suggestions and objections. It is also held by the learned Single Judge that in Town Planning matter, especially of reservation, this Court will look only to the fact that whether procedure to impose reservation has been followed or not, and once this decision making process is found correct, the decision of the Government in Town Planning matter, especially reservation of land for the purposes referred to in Section-12 of the Act, 1976, generally will

not be upset by the Court in exercise of extraordinary jurisdiction under Article-226 of the Constitution of India.

13. Now considering the aforesaid decision and the ratio laid down therein with the facts of the case on hands, the contention on behalf of the petitioners that there is no need of the lands in question by the APMC, Surat and that need is required to be considered as on date on which the development plan was proposed and the future need and/or development cannot be considered, cannot be accepted and the said contention, as such, has no substance and the same is required to be rejected. It is true that earlier the APMC, Surat might have taken decision and/or passed resolution. However, at this stage this Court may not go into all that aspects that how said decision was taken by the Market Committee. But looking to the affidavit-in-reply filed on behalf of the APMC, Surat and that too in view of the

specific assertion on behalf of the APMC, Surat that they need the lands in question as due to establishment of new market yard and for future expansion they need more land, this Court is of the opinion that it is the market committee whose need is required to be considered, which needs land for public purpose and not the submission on behalf of the private persons with regard to the need. It is also required to be noted at this stage that even earlier in the year 1996 when the draft development plan was proposed, it was proposed for redesignation of the lands in question in commercial zone for APMC, Surat. However, for some reasons it was changed and thereafter after considering the needs of the APMC, Surat, when the lands in question are redesignated in commercial zone for APMC, Surat under the revised sanctioned development plan, while exercising the powers under Section-17 of the Act, it cannot be said that the same is in any way illegal and / or arbitrary.

14. So far as the allegations of malafide are concerned, at the outset it is required to be noted that as such, there are no specific allegations of malafide against any particular person/s. There are no allegations of malafide against APMC, Surat. Therefore, when the APMC, Surat has submitted that they need the lands in question for their own public purpose and when the lands in question are reserved for APMC, Surat, in absence of any specific malafide alleged against APMC, Surat, vague submission of malafide, cannot be accepted, more particularly, there are no allegations against the APMC, Surat. It is pertinent to note that under the provisions of the Act, more particularly, Section-12 of the Act, the lands can be reserved for any public purpose/s for local authority as envisaged under Section-12 and the APMC, Surat being the local authority for whose benefit the lands in question can be reserved and accordingly, the lands in

question are redesignated in commercial zone for APMC, Surat and therefore, the same is also in consonance with the provisions of Section-12 of the Act. It also required to be noted that the learned advocate appearing on behalf of the petitioners has not contended that the procedure as required to be followed under the Act, has not been followed, nor he is able to make out any such submission/s and/or contention to prove his case and thus, the learned advocate for the petitioners is not able to point out that the respondents have not followed the procedure as required under the Act of 1976.

15. Under the circumstances, and for the reasons stated above, and considering the judgment of the learned Single Judge of this Court on the identical issue in case of ISHWARBHAI GANPATBHAI PATEL V. STATE OF GUJARAT & ORS (Supra), all these special civil applications are required to be dismissed and are accordingly dismissed.

16. Rule stands discharged in each of the matter of this group. However, there shall be no order as to costs.

[M.R.Shah, J.]

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